

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PAUL SCOTT KLEIN,

Plaintiff

Case No. 3:23-cv-00337-ART-CSD

ORDER

v.

MICHAEL FLAMM, et al.,

Defendants

**I. DISCUSSION**

Plaintiff has applied to proceed *in forma pauperis* (“IFP”) in this action. (ECF No. 1). On December 20, 2023, the Court issued a screening order permitting one claim to proceed, dismissing some claims with leave to amend, and dismissing some claims without leave to amend. (ECF No. 3 at 12). In the screening order, the Court deferred ruling on Plaintiff’s IFP application. (*Id.*) The Court granted Plaintiff 30 days from the date of that order to file an amended complaint curing the deficiencies of the complaint. (*Id.*) The Court specifically stated that, if Plaintiff chose not to file an amended complaint, the action would proceed immediately and only on the First Amendment retaliation claim against Defendants Flamm and Garcia. (*Id.* at 13). Plaintiff has not filed an amended complaint. Pursuant to the screening order, this action will proceed on the First Amendment retaliation claim against Defendants Flamm and Garcia only.

The Court also denies as premature Plaintiff’s motion requesting that the Nevada Attorney General be served a summons and complaint. (ECF No. 5). This case is in the pre-service screening stage. The Court will order service when procedurally applicable to do so.

**II. CONCLUSION**

For the foregoing reasons, it is ordered that, pursuant to the Court’s screening order (ECF No. 3), this action will proceed on the First Amendment retaliation claim against Defendants Flamm and Garcia only.

1 It is further ordered that given the nature of the claim(s) that the Court has  
2 permitted to proceed, this action is stayed for 90 days to allow Plaintiff and Defendant(s)  
3 an opportunity to settle their dispute before the Court will determine whether to grant  
4 Plaintiff's IFP application, the \$350 filing fee is paid, an answer is filed, or the discovery  
5 process begins. During this 90-day stay period and until the Court lifts the stay, no other  
6 pleadings or papers may be filed in this case, and the parties will not engage in any  
7 discovery, nor are the parties required to respond to any paper filed in violation of the stay  
8 unless specifically ordered by the Court to do so. The Court will refer this case to the  
9 Court's Inmate Early Mediation Program, and the Court will enter a subsequent order.  
10 Regardless, on or before 90 days from the date this order is entered, the Office of the  
11 Attorney General will file the report form attached to this order regarding the results of the  
12 90-day stay, even if a stipulation for dismissal is entered prior to the end of the 90-day  
13 stay. If the parties proceed with this action, the Court will then issue an order setting a  
14 date for Defendants to file an answer or other response. Following the filing of an answer,  
15 the Court will issue a scheduling order setting discovery and dispositive motion deadlines.

16 It is further ordered that "settlement" may or may not include payment of money  
17 damages. It also may or may not include an agreement to resolve Plaintiff's issues  
18 differently. A compromise agreement is one in which neither party is completely satisfied  
19 with the result, but both have given something up and both have obtained something in  
20 return.

21 It is further ordered that if the case does not settle, then the Court will determine  
22 whether to grant Plaintiff's IFP application. Plaintiff will be required to pay the full \$350.00  
23 statutory filing fee for a civil action regardless of whether the Court grants his IFP  
24 application. This fee cannot be waived, and the fee cannot be refunded once the Court  
25 enters an order granting Plaintiff's IFP application. If Plaintiff is allowed to proceed IFP,  
26 the fee will be paid in installments from his prison trust account. See 28 U.S.C. § 1915(b).  
27 If Plaintiff is not allowed to proceed IFP, the full \$350 statutory filing fee for a civil action  
28 plus the \$52 administrative filing fee, for a total of \$402, will be due immediately.

1 It is further ordered that if any party seeks to have this case excluded from the  
2 inmate mediation program, that party will file a "motion to exclude case from mediation"  
3 no later than 21 days prior to the date set for mediation. The responding party will have  
4 7 days to file a response. No reply will be filed. Thereafter, the Court will issue an order,  
5 set the matter for hearing, or both.

6 It is further ordered that if Plaintiff needs an interpreter to participate in the  
7 mediation program, Plaintiff will file a notice identifying the interpretation language and  
8 the need for the interpreter within 30 days from the date of this order.

9 It is further ordered that the Clerk of Court is further directed to add the Nevada  
10 Department of Corrections to the docket as an Interested Party and electronically serve  
11 a copy of this order, the screening order (ECF No. 3), and a copy of Plaintiff's complaint  
12 (ECF No. 4) on the Office of the Attorney General of the State of Nevada by adding the  
13 Attorney General of the State of Nevada to the interested party on the docket. This does  
14 not indicate acceptance of service.

15 It is further ordered that the Attorney General's Office will advise the Court within  
16 21 days of the date of the entry of this order whether it will enter a limited notice of  
17 appearance on behalf of Defendants for the purpose of settlement. No defenses or  
18 objections, including lack of service, will be waived as a result of the filing of the limited  
19 notice of appearance.

20 It is further ordered that the motion requesting that the Nevada Attorney General  
21 be served a summons and complaint (ECF No. 5) is denied as premature.

22 DATED: January 31, 2024.

23   
24 \_\_\_\_\_  
25 United States Magistrate Judge  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PAUL SCOTT KLEIN,

Plaintiff

v.

MICHAEL FLAMM, et al.,

Defendants

Case No. 3:23-cv-00337-ART-CSD  
REPORT OF ATTORNEY GENERAL  
RE: RESULTS OF 90-DAY STAY

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.  
THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

On \_\_\_\_\_ [the date of the issuance of the screening order], the Court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

**REPORT FORM**

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

**Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay.** [If this statement is accurate, check ONE of the six statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

1 \_\_\_\_\_ No mediation session with a court-appointed mediator was held during the  
2 90-day stay, but the parties have nevertheless settled the case. *(If this box*  
3 *is checked, the parties are on notice that they must SEPARATELY file a*  
4 *contemporaneous stipulation of dismissal or a motion requesting that the*  
*Court continue the stay in this case until a specified date upon which they*  
*will file a stipulation of dismissal.)*

5 \_\_\_\_\_ No mediation session with a court-appointed mediator was held during the  
6 90-day stay, but one is currently scheduled for \_\_\_\_\_ [enter  
date].

7 \_\_\_\_\_ No mediation session with a court-appointed mediator was held during the  
8 90-day stay, and as of this date, no date certain has been scheduled for  
such a session.

9 \_\_\_\_\_ None of the above five statements describes the status of this case.  
10 Contemporaneously with the filing of this report, the Office of the Attorney  
General of the State of Nevada is filing a separate document detailing the  
status of this case.

11 \* \* \* \* \*

12 **Situation Two: Informal Settlement Discussions Case:** The case was NOT assigned  
13 to mediation with a court-appointed mediator during the 90-day stay; rather, the  
14 parties were encouraged to engage in informal settlement negotiations. [If this  
statement is accurate, check **ONE** of the four statements below and fill in any additional  
information as required, then proceed to the signature block.]

15 \_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the  
16 parties have reached a settlement *(even if the paperwork to memorialize*  
17 *the settlement remains to be completed)*. *(If this box is checked, the parties*  
18 *are on notice that they must SEPARATELY file either a contemporaneous*  
*stipulation of dismissal or a motion requesting that the Court continue the*  
*stay in this case until a specified date upon which they will file a stipulation*  
*of dismissal.)*

19 \_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the  
20 parties have not reached a settlement. The Office of the Attorney General  
therefore informs the Court of its intent to proceed with this action.

21 \_\_\_\_\_ The parties have not engaged in settlement discussions and as of this date,  
22 the parties have not reached a settlement. The Office of the Attorney  
General therefore informs the Court of its intent to proceed with this action.

23 \_\_\_\_\_ None of the above three statements fully describes the status of this case.  
24 Contemporaneously with the filing of this report, the Office of the Attorney  
25 General of the State of Nevada is filing a separate document detailing the  
status of this case.

26 Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

27 Attorney Name: \_\_\_\_\_

Print

Signature

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_